

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD RYNN, next friend and parent of
MR, a minor person; next friend of M.R.,

No. 21-16454

Plaintiff-Appellant,

D.C. No. 2:18-cv-00414-JJT

v.

MEMORANDUM*

GREGORY A. McKAY, in his official
capacity as Director of Arizona Department
of Child Safety and personally; et al.,

Defendants-Appellees,

and

RENEE MILLER; et al.,

Defendants.

Appeal from the United States District Court
for the District of Arizona
John Joseph Tuchi, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Rynn’s requests for oral argument, set forth in his filings, are denied.

Richard Rynn appeals pro se from the district court's orders denying his post-judgment motions in his 42 U.S.C. § 1983 action alleging federal and state law claims arising out of defendants' removal of his minor daughter from his custody. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017) (denial of motion to vacate); *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001) (denial of motion to amend). We affirm.

The district court did not abuse its discretion in denying Rynn's motion to vacate the judgment under Federal Rule of Civil Procedure 60(d)(3) because Rynn failed to establish a fraud on the court. *See Sierra Pac. Indus.*, 862 F.3d at 1168 (discussing when relief is available under Rule 60(d)(3) and explaining that a party must identify misrepresentations that "affect the outcome of the case" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying Rynn's motion to amend under Rule 59(e) because Rynn failed to establish that the district court judge should have recused himself or any other basis for relief. *See Zimmerman*, 255 F.3d at 740 (discussing when relief is available under Rule 59(e) and explaining that a party may not "repeat[] legal arguments made earlier" or "introduce facts that were available earlier in the proceedings"); *see also* 28 U.S.C. § 455(b)(5) (explaining when recusal is required based on circumstances involving

a judge's spouse):

To the extent Rynn challenges the underlying judgment dismissing his action, we do not consider his contentions because they are outside the scope of this appeal.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Rynn's motions to correct his briefs (Docket Entry Nos. 28, 43, and 44) are granted. All other requests are denied.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista (maria.b.evangelista@tr.com));
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature Date

(use "s/[typed name]" to sign electronically-filed documents)

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Principal Brief(s) <i>(Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief)</i>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Supplemental Brief(s)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee				\$ <input type="text"/>
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TOTAL: 4 x 500 x \$.10 = \$200.*

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Richard Rynn,

10 Plaintiff,

11 v.

12 Gregory A. McKay, *et al.*,

13 Defendants.
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No. CV-18-00414-PHX-JJT

ORDER

15 At issue are *pro se* Plaintiff Richard Rynn's Motion for Summary Judgment
16 (Doc. 108), For Retrial and to Set Aside Judgment (Doc. 110), and for Recusal (Doc. 111).
17 Because the Court will deny all these motions, the Court will not await responses from
18 Defendants and will not hold oral argument. *See* LRCiv 7.2(f).

19 Over four years ago, on November 6, 2018, the Court entered judgment dismissing
20 Plaintiff's claims in this lawsuit with prejudice. (Docs. 59, 71, 72.) Plaintiff moved for a
21 new trial (Doc. 75), which the Court denied (Doc. 77). Plaintiff then moved to set aside the
22 judgment (Doc. 82) and filed a supplemental motion to set aside the judgment (Doc. 84),
23 which the Court denied (Doc. 96). Plaintiff appealed the Court's decisions (Doc. 102), and
24 on March 9, 2023, the Ninth Circuit Court of Appeals affirmed the Court's decisions
25 (Doc. 107). Plaintiff now requests again to set aside the judgment, for summary judgment,
26 and for the undersigned to recuse. The Court has already addressed Plaintiff's arguments
27 in its multiple prior Orders, and Plaintiff has given the Court no basis in the new set of
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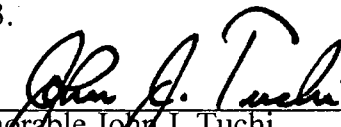
1 Motions to set aside the prior judgment—which has been affirmed on appeal—or to grant
2 summary judgment in favor of Plaintiff, or for the undersigned to recuse from this case.

3 This matter has been and now remains closed. No further filings will be permitted.

4 **IT IS THEREFORE ORDERED** denying Plaintiff's Motion for Summary
5 Judgment (Doc. 108), For Retrial and to Set Aside Judgment (Doc. 110), and for Recusal
6 (Doc. 111). This case remains closed.

7 **IT IS FURTHER ORDERED** that the Clerk of Court shall not accept any further
8 filings in this matter.

9 Dated this 30th day of March, 2023.

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11 
12 Honorable John J. Tuchi
13 United States District Judge
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No. 21-16454

D.C. No. 2:18-cv-00414-JJT
District of Arizona,
Phoenix

ORDER

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Rynn's petition for panel rehearing (Docket Entry No. 54) is denied.

No further filings will be entertained in this closed case.